

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 14 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2008-0420
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JOHN CAMACHO,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054074

Honorable Frank Dawley, Judge Pro Tempore  
Honorable Gus Aragon, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Kathryn A. Damstra

Tucson  
Attorneys for Appellee

R. Lamar Couser

Tucson  
Attorney for Appellant

K E L L Y, Judge.

¶1 After a jury trial, appellant John Camacho was convicted of two counts of child molestation, both dangerous crimes against children, and was sentenced to

concurrent, presumptive prison terms of seventeen years on each count. On appeal, he contends the trial “court abused its discretion and denied [him] a fair trial by allowing him to proceed in [propria persona], without first conducting a proceeding to determine if he was competent to waive counsel.” We affirm for the reasons stated below.

¶2 As Camacho concedes, he waived counsel at trial after “he feuded with and got rid of seven appointed counsel.” He also filed numerous pleadings and motions in the superior court and sought relief in federal court. He repeatedly sought to remove attorneys and trial judges assigned to the case, filed a complaint against at least one judge, and filed complaints with the State Bar of Arizona against his appointed attorneys. One attorney whom the court initially appointed, but who could not take the case, commented that if Camacho were his client he would request a mental competency examination of Camacho pursuant to Rule 11, Ariz. R. Crim. P. But no attorney who actually represented Camacho ever requested such an examination.

¶3 Two weeks before the scheduled trial date, Camacho filed a pro se notice of “Waiver of Right[] to Counsel,” asking that he be permitted to represent himself and again requesting a change of judge. His appointed counsel at the time filed a motion to withdraw. The court provided Camacho with a waiver form, reviewed the waiver with him at a status conference in March 2008, and found he had knowingly, voluntarily, and intelligently waived the right to counsel. The court granted counsel’s motion to withdraw but denied Camacho’s most recent request that the judge remove himself from the case. The trial was continued. A status conference was held in October 2008 before a different judge, who confirmed Camacho had relinquished the right to counsel after reviewing

Camacho's waiver again. Although Camacho stated he did not wish to participate in or attend trial, the court ordered him to appear and reset trial for the next week.

¶4 Camacho appeared for trial but did not participate and presented no defense. The jury found him guilty, as stated above. On appeal, he contends the court should have ordered *sua sponte* a mental examination pursuant to Rule 11. That contention is without merit. A trial judge need not order a competency evaluation whenever a defendant waives the right to counsel; rather, the court should do so only when it "has reason to doubt the defendant's competence." *Godinez v. Moran*, 509 U.S. 389, 401 n.13 (1993). "[T]he competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." *Id.* at 399. Thus, while "[i]t is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts,' a criminal defendant's ability to represent himself has no bearing upon his competence to *choose* self-representation." *Id.* at 400, *quoting Fareta v. California*, 422 U.S. 806, 834 (1975) (citation omitted; alteration in *Godinez*).

¶5 The court "is under a continuing duty to inquire into defendant's competency, and to order a rule 11 examination *sua sponte* if reasonable grounds exist" to question it. *State v. Amaya-Ruiz*, 166 Ariz. 152, 162, 800 P.2d 1260, 1270 (1990). But "[t]he trial court is vested with broad discretion in determining whether reasonable grounds exist for an examination [on competence], and unless there has been a manifest abuse of that discretion, the trial court's decision will be upheld." *State v. Druke*, 143 Ariz. 314, 316, 693 P.2d 969, 971 (App. 1984).

¶6 That Camacho filed motions and complaints prolifically, had multiple attorneys removed from the case, and asserted judges and attorneys were conspiring against him, did not necessarily impose upon the trial court a duty to order a competency evaluation. *Cf. State v. Dann*, 220 Ariz. 351, ¶ 19, 207 P.3d 604, 612 (2009) (“Dissatisfaction with counsel does not, of itself, warrant a hearing to determine counsel’s competence and does not affect whether the waiver was voluntary, knowing, and intelligent.”). As the court stated in *State v. Kayer*, 194 Ariz. 423, ¶ 38, 984 P.2d 31, 42 (1999), “[a] defendant is deemed legally competent if he or she has demonstrated an ability to make a reasoned choice among alternatives, with an understanding of the consequences of the choice.” The court added, “[f]or a defendant’s choice to be found competent, proof must exist that the defendant’s decision was voluntary, knowing, and intelligent.” *Id.* Additionally, the court noted, “[c]ompetent choices are not to be equated with wise choices; competent defendants are allowed to make choices that may not objectively serve their best interests.” *Id.* A defendant who waives counsel and wishes to represent himself must be “made aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’” *Faretta*, 422 U.S. at 835, *quoting Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942).

¶7 Implicitly, when the court accepted Camacho’s written waiver and found he had knowingly, voluntarily, and intelligently waived counsel, the trial court found no reasonable grounds to question whether Camacho was competent to waive his right to counsel. Whether a waiver is knowingly, voluntarily, and intelligently made is a question

of fact, to be decided “based substantially on the trial judge’s observation of the defendant’s appearance and actions.” *Dann*, 220 Ariz. 351, ¶ 10, 207 P.3d at 611. The court had numerous interactions with Camacho and ample opportunity to determine whether there were any grounds to believe he lacked competence. Camacho repeatedly asserted he did not want to be represented by counsel. The court reviewed the waiver form with Camacho and made clear to him the consequences of waiving his right to counsel. To each explanation the court gave, Camacho responded articulately and clearly that he understood. At one point, the trial judge to whom the case was newly assigned commented, “reading your paperwork, it seems like you are a pretty bright person.” Based on the record before us, we cannot say the trial court abused its discretion when it found Camacho had knowingly, voluntarily, and intelligently waived his right to counsel. Having made that finding, we cannot say the court erred by failing sua sponte to order an evaluation pursuant to Rule 11.

¶8 The convictions and the sentences are affirmed.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge